IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6703 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BALIM RAHEMATKHAN LATIFKHAN

Versus

BECHARI VIVIDH KARYAKARI SAHA-KARI MANDALI LTD

Appearance:

MR BR PARIKH for Petitioners

NOTICE SERVED for Respondent No. 1

MR Ashish H. Shah for GIRISH D BHATT for Respondent No. 2

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 04/04/2000

ORAL JUDGEMENT

This petition is filed by the petitioners against the award passed by the Board of Nominee on 26th April, 1988 and confirmed by the Gujarat Cooperative Tribunal on

30th December, 1988.

The case of the petitioners is that respondent No.1 Bechari Vividh Karyakari Sahakari Mandli Limited is a society registered under the Gujarat Cooperative Societies Act, 1961. Petitioner No.1 was the Secretary and petitioner No.2 was the Chairman of the society. The society filed Lavad suit No. 961 of 1983 before the Board of Nominee against the petitioners and respondent No.2 Patel Jashbhai Dahyabhai for recovery of Rs. 11,550/- with interest and costs. The case of the society was that there was deficit of 61 bags of fertilizer and the defendants were liable for such loss and deficit as office bearers of the society. The Board of Nominee vide its award dated 3rd February, 1982 held that present respondent No. 2 was liable and exonerated the present petitioners. Being aggrieved by the said award, an appeal was filed before the Gujarat Cooperative Tribunal which was allowed by the Tribunal on 17th September, 1986 and the award passed by the Board of Nominee was set aside and the matter was remanded to the board of Nominee to decide the same afresh in accordance with law. It was stated that defendant No.1-present respondent No.2 will not unduly delay the proceedings.

The matter was again placed for hearing before the Board of Nominee. The Board of Nominee, after considering the relevant record , material and depositions, observed that defendant No.1- Secretary was doing the management of the society and the said fact was admitted by him. Respondent No. 2 was Chairman and was also connected with the administration. Defendant No.2 was merely owner of the house which was taken on rent by the society where the fertilizer was stored. A resolution was said to have been passed by the society on 15th December, 1976 wherein it was stated that liability to look after fertilizer in the premises of defendant No.2 was on defendant No.2. But there was nothing on record to fix liability of defendant No.2 who was the owner of the premises. As defendant No.1 was the secretary and defendant No. 3 chairman and was supposed to look after the administration of the society, it was their responsibility. Since they failed in discharging their duties, thery were liable. According to the Board of Nominee, it was also on record that criminal case was filed against defendants Nos.1 and 3Secretary and Chairman respectively which resulted in acquittal.
The Board of Nominee, vide the award dated 26th April, 1988, directed defendants Nos. 1 and 3 -Secretary and Chairman respectively to pay the amount with interest and costs as mentioned in the award.

Being aggrieved by the award passed by the Board of Nominee, an appeal was filed before the Gujarat Cooperative Tribunal and the Tribunal also confirmed the award passed by the Board of Nominee and dismissed the appeal. While dismissing the appeal and affirming the award passed by the Board of Nominee, the Tribunal observed that the Board of Nominee exonerated defendant No.2- owner of the property and the society had not filed any appeal against him. But it also recorded a finding that the Board of Nominee was right in holding Secretary and Chairman liable.

Against the aforesaid order, present petition is filed. Rule was issued and ad-interim relief was also granted.

Rule was served to respondent No.1 society, but nobody appears on behalf of the society. Mr. Ashish Shah appears for Mr G.D. Bhatt for respondent No.2.

Mr Parikh for the petitioners submitted that both the petitioners were acquitted by competent criminal court and hence, the Board of Nominee and Tribunal have committed an error of law in holding them liable.

There was nothing on record to show that the petitioners were liable and in absence of positive evidence, no award could have been passed by the Board of Nominee and confirmed by the Tribunal.

The Tribunal has committed an error of law apparent on the face of record in exonerating respondent No.2 by observing that he was exonerated by the Board of Nominee and no appeal was filed against it by the society. He submitted that the provisions of Rule 41, Rule 33 of the Code of Civil Procedure, 1908 would apply to such cases and the Tribunal ought to have considered that aspect.

Mr. Ashish Shah for Mr. G.D. Bhatt for respondent No.2 on the other hand, supported the award passed by the Board of Nominee and confirmed by the Tribunal. He submitted that on the basis of evidence on record, the Board of Nominee held that management and administration of the society was conducted by the Secretary and Chairman and hence, they were liable for the loss caused to the society. Respondent No.2 who was merely owner of the property and who had rented the premises for keeping fertilizer in the godown could not be held responsible . Such a finding was based on evidence which was confirmed by the Tribunal and there is no reason to interfere with

the said finding.

The Tribunal has not committed any error in confirming the award passed by the Board of Nominee and considering evidence as well as findings recorded by the Board of Nominee, the Tribunal affirmed the award of the Board of Nominee. As a statement of fact, an incidental observation was made by the tribunal that no question had arisen for holding respondent No.2 liable as the society had not filed any appeal against respondent No.2 . From that, however, the finding which has been recorded by both the authorities based on materials cannot be lost sight of. He,therefore, submitted that the petition deserves to be dismissed.

Having heard the learned advocates for the parties, in my opinion, no error of law or of jurisdiction can be said to have been committed either by the Board of Nominee or by the Tribunal. On the basis of evidence on record and in the light of relevant provisions of law and depositions of witnesses, the Board of Nominee held that management and administration of the society was done by the Secretary, petitioner No.1 under the supervision of Chairman, petitioner No.2. In that capacity, both the petitioners were liable. Therefore, they were bound to pay the amount to the society. So far as respondent No.2 is concerned, he was in no way connected with the administration or management of the society but was merely owner of the property which was let to the society for keeping fertilizer in the premises. The Board of Nominee also held that some resolution was said to have been passed in December, 1976 by which respondent No.2 was sought to be made liable , but it could not be relied upon. It was for the Board of Nominee to consider the relevant facts and circumstances and considering all relevant facts , a finding was reached holding both the petitioners liable and the said finding was based on evidence. When the award was confirmed by the Tribunal, in exercise of powers under Article 226/ 227 of the Constitution, this Court will not reappreciate the evidence and reach a different conclusion.

It is no doubt true that against both the petitioners, a criminal case was filed and they were acquitted. But that does not carry the matter further . May be that, in criminal case, the offence was not proved beyond reasonable doubt and hence, they were not held liable . But on the basis of evidence on record, the Board of Nominee passed an award against both the petitioners which was confirmed by the Tribunal and they were held liable. Such a finding could have been recorded by the

authorities under the Act and I see no infirmity therein.

For the foregoing reasons, I see no substance in the petition. It deserves to be dismissed and is accordingly dismissed. Rule is discharged. Ad-interim relief is vacated. No order as to costs.

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parekh